

COMMENTS BY ROCHELLE E. LENTO
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY'S (MSHDA)
QUALIFIED ALLOCATION PLAN (QAP) FOR THE LOW INCOME HOUSING TAX CREDIT
(LIHTC) PROGRAM PROPOSED FOR 2008-09
HEARING: SEPTEMBER 19, 2007

Pursuant to the proposed MSHDA QAP as stated, Michigan law requires that the QAP set forth criteria to be used in determining housing priorities of the State, and to give the highest priority to those projects in the highest percentage of tax credit dollar amount to be used for project costs, those that give preference to serving the lowest income tenants for the longest period of time, and those developments located in hard-to-develop areas. The preamble to the proposed QAP provides context for the guidelines in relationship to other MSHDA initiatives, including the State Consolidated Plan, Five-Year Affordable Housing Community Action Plan, Public Housing and Administrative Plans, Land Use and Growth Tenets, Michigan Economy and Vibrant Communities, and Homeless and Poverty Efforts of the State.

My perspective on the QAP is derived from over 17 years of representing developers, many of which are non profit developers of affordable housing utilizing the 9% LIHTC program, 4% LIHTC/Tax Exempt Bonds, and MSHDA Direct Lend Programs. Over the course of that span of years, I have witnessed much growth, development and change in the LIHTC program. I have also been involved in projects of first impression in Michigan, dating back to 1992 when the Brightmoor Homes I project, which was the first scattered site LIHTC development completed in Michigan was financed. I have worked with a range of non profit and for profit developers throughout the State of Michigan. I have also participated actively with the ABA Forum on Affordable Housing and Community Development Law ("Forum"), and I am currently the national Chair of the Forum for 2007-08.

There are many specific changes to the 2008-09 QAP, some of which are positive and welcome modifications to the LIHTC, while others present further challenges and concerns. It is fundamentally difficult to assess this QAP without the availability of the scoring sheets to understand how potential projects will be scored. An example of how this lack of information is difficult lies in the notion that there will be additional points provided for "preservation projects" thereby lessening the concern by many that there is no separate set-aside or hold back for preservation. Below is a summary of many of those changes and the concerns they raise for developers of affordable housing:

- **Proposed Funding Rounds:** While the proposal to move back to two funding rounds per year seems fair and more consistent with a developer's timeline, *the proposed date of 12/27/07 for the next LIHTC round for a combined 2007/08 LIHTC fund is problematic at best.* In addition, *the prohibition against personal delivery seems unwarranted.* It would seem to make more sense to

have an early round in 2008, since decisions will not be made until 2008 realistically. And, instead of prohibiting personal delivery, simply set a hard fast deadline that applies to all regardless of circumstances.

- **Funding Allocation Limits:** The new rule that “a maximum of two applications per funding round from a sponsor” seems like an attempt to level the playing field to allow more participants. This may however, be an unnecessary limit given the 10% cap of the annual credit to any single sponsor. Also, what if a sponsor joint ventures on a project, will the two applications per funding round still apply for related parties?

Second, the newly proposed single project annual credit cap limits within holdbacks seem to be a move towards providing the maximum flexibility and distribution of the credits to the most projects.

A. QAP Holdbacks:

Cities of Detroit, Hamtramck and Highland Park (HDHP) – 50% holdback .. this is a proactive logical parameter for these three communities. As of the 2000 U.S. Census, as summarized and published by the Wayne State University's Center for Urban Studies, those three communities combined have the highest % of the State's poorest and neediest families. Given those characteristics, they also emanate many of the State's priorities for affordable housing targeting.

Second, the city of Highland Park has had very few LIHTC developments supported by MSHDA. Recently, I have been assisting some Highland Park clients, and while working closely with the City administration to obtain it's support, I have learned that MSHDA has only supported one 9% LIHTC development in the history of the program. Highland Park, in particular has tremendous need for state LIHTC projects.

Finally, during the last QAP hearings for the 2006-08, we did an analysis of the amount of LIHTCs Detroit had received from 2001-2004 and determined that on the average, the City received 53% of the LIHTCs during that period. At present, the City's population is less than in 2001, thus combining this hold-back with Highland Park and Hamtramck (cities within the City) makes sense.

- **Affordable Assisted Living Holdback:** While MSHDA's goal to have this holdback and allocate LIHTCs to a minimum of one (1) affordable assisted living project (not to exceed \$750,000) is commendable, it is my understanding that without a Medicaid waiver program, this type of housing is simply not financially feasible. Will MSHDA have any ability to alter the State's policy on Medicaid Waivers, or be able to provide some other subsidy to make these type of projects feasible? MSHDA should assure input from senior developers of affordable housing on this priority.

1. Lottery System Abandoned:

Although not explicitly stated, it appears that the lottery as we have known it for the past two years is over. I was opposed to the lottery in 2004 on fundamental fairness grounds, and applaud MSDHA for its discontinuation.

The point and merit system seem a more transparent and fair system. The current lottery and threshold point system created a 'least common denominator system' and deterred excellence. It also discouraged developers from trying to achieve the best quality project, since the lottery system inculcated 'luck' as such a major factor. It also seemed to create a 'double review' system and slowed down the process, rather than expediting it as one of the stated rationales for the lottery. I also have seen the lottery weed out smaller developers, who view the process as not one based upon merit or quality, but instead based on volume and perseverance, or the ability to continually resubmit the same project.

2. Special Needs/Supportive Housing (10% of all units):

This QAP seems to mandate that 10% of all units in any given project (not already part of a Special Needs/Supportive Housing project) give leasing priority to Supportive Housing tenants, who meet MSHDA's guidelines. This mandate requires all Developers/Sponsors target and set aside units for this special needs population. The result is all Developers/Sponsors become providers of special needs services, many of which do not have that as part of their core mission. This raises the question of the quality of services being provided to this population. Plus, all will be required to hire Special Needs providers, who must then interface with the Management Company, most likely requiring a third party reciprocal agreement. This would be better if it were an optional targeting, not mandatory.

Many clients have reported to me over the years that it is the Special Needs units that are the most difficult to rent, and the most difficult to keep rented. Has MSHDA studied the extent of the need for these units in the State? Finally, the operational costs are higher for special needs projects.

3. Additional Workforce Requirements, i.e. Prevailing Wage + Health Care:

While I have certainly not done any systematic study on this point, I have been told by clients and had challenges, particularly on smaller projects when additional requirements are placed on general contractors. Certain projects, i.e. those including HOME funds and others being of a certain size will be subject to prevailing wage. To subject all projects, regardless of size and location to prevailing wage and health care requirements may make those projects so cost prohibitive that many small-to-mid size contractors will be eliminated from being competitive in the industry and the projects became financially infeasible. I would assert that the same issues would arise for mandated health care coverage.

While these are laudable goals, MSHDA may have to rethink applying these to all projects, big and small, urban and rural.

4. Environmental Review:

It appears that this QAP has eliminated the pre-review for environmental, and compliance with MSHDA environmental standards. Given the sensitive and complex nature of environmental issues, and potential remediation, this pre-review provided a valuable evaluation for developers, prior to submission of a LIHTC application.

5. Letters from Three Equity Investors:

This new requirement or standard seems unrealistic and presents an unprecedented burden on developers. It would seem that the goal should be to assure that the developer has a solid commitment or letter of intent from a single equity syndicator. Requiring that the developer secure three such letters appears to be a movement towards MSHDA comparing and contrasting terms, and getting perhaps too close to a “business decision” that the developer will need to decide. This should be the prerogative of the developer to obtain more than one letter in order to get the best terms. In my experience with clients, it is often a practice for a client to have discussions and negotiations with more than one syndicator, in order to obtain the best business terms.

I have experienced many clients, who, while entertaining and possibly obtaining letters from more than one syndicator, will work stridently to obtain the best commitment based on the business terms they view as critical to a deal, and submit only that one after extensive negotiations. Requiring three letters may result in letters that have conflicting or inconsistent terms, thus complicating further negotiations. I suggest MSHDA continue the current requirement of one syndicator letter.

6. Extended Use Commitment:

It appears that this QAP is mandating a “MSHDA extended use commitment of 90 years”, except for single family rental projects that are developed with a rent-to-own prospect at the end of the compliance period. Although this is understandable, given MSHDA’s preference to preserve long term affordability, this type of an extended use period would seem to present challenges to refinancing, exit strategies, and even obtaining other financing which would need to be subordinate to the MSHDA Regulatory Agreement, which is likely to contain this extended use period.

What is the rationale for including such an extended use commitment of 90 year? Is this consistent with other states around the country? How will this dovetail with the “qualified contract rules” and “right of first refusal”?

7. Disqualifications:

This section requiring a criminal conviction clearance for all development team members, including owner, its principals, sponsor, developer, management company, general contractor, consultant or "related party", the latter of which is not even defined, appears to be a new requirement and one unwarranted. If MSHDA is trying to emulate the 2530 HUD Clearance Process, which requires an electronic clearance form to be completed and filed for this and other purposes, MSHDA should consider the fact that this HUD process has had severe challenges and flaws. While there have been strides made to correct some of the problems, it has still been known to seriously delay projects.

I would submit some specific questions for MSHDA regarding this criminal clearance:

- How will MSHDA verify statements it receives?
- Who will bear the cost of completing the criminal background check?
- How does MSHDA define "related parties"?
- Will this only include Michigan convictions? If not, how is the information obtained? And, will out-of-state developers and others have to complete a criminal background check in their respective state?

The default disbarment, suspension and foreclosure disqualifications seem appropriate and consistent with the last QAP.

8. Negative Point System:

The negative point system seems to punish applicants for "technical errors, incomplete information or documentation or significant/material inconsistencies". Coupled with the apparent elimination of the pre-review of market studies and environmental reports, this negative point system seems harsh. It also appears to give much discretion to MSHDA to determine if something is a technical error or significant/material inconsistency. Are those terms or qualifiers defined somewhere in the proposed QAP. Additionally, what will MSHDA do in the event that there is a dispute as to whether incomplete information or documentation was submitted with the application.

If projects are scored according to their accuracy, completeness, and compliance with all exhibit and technical requirements, it would seem that such a scoring system addresses naturally the points earned, and recognizes those technical errors, incompleteness, and inconsistencies inherently. There is also no cure period to address what might be clerical or administrative errors, or even those that might be perceived as technical errors.

MSHDA already has the ability to assess negative points against a Developer for a failed or troubled project, which practice should and will continue.

9. No Formal Appeal Process + Eliminated Pre-Review Process:

Despite the fact that the pre-review has been eliminated, and this negative point system is being proposed, there is still no formal process for appeal of a denial of a LIHTC application for funding. There is a statement in the QAP stating that "any changes to a project that require a re-scoring or re-evaluation which causes the project to fall below its original position will cause the reservation of LIHTC to be rescinded". It would seem prudent for MSHDA to outline and define a process, whether informal or formal to appeal a denial or to challenge a threshold score that does not appear to accurately reflect the developer's expectation in a self-score or the merits of their application. Over the years, I have unfortunately been involved on many occasions with projects denied credits, or rescored resulting in possible rescission of credits. Each instance has resulted in a discretionary review of the circumstances, which has generally resulted in a fair outcome. However, often those situations depend on relationships and are subjective in process. A more transparent, objective process for appeals seems warranted.

10. Capacity of MSHDA Review of LIHTC:

It does not appear that there are any provisions to increase the amount of MSHDA staff responsible for review of LIHTC applications. For certain key parts of the review process, i.e., environmental, architectural, market, MSHDA is very under-staffed, and often relies on third party reviewers. Particularly given the movement towards scoring and evaluation based on the merits of an application, increasing the capacity of the MSHDA review teams seems critical to shortening the review, processing and decision-making time.

In conclusion, while MSHDA has done a yeoman's job in acknowledging and incorporating other core initiatives in the state, and those akin to our local communities, there are still essential issues germane to the LIHTC program which need to be further evaluated and addressed.

Thank you for your time today.

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